

APPEAL NO. 042094  
FILED OCTOBER 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 6, 2004. The hearing officer determined that the respondent (claimant) is not entitled to reimbursement of travel expenses for receiving medical treatment at the direction of Dr. G. The hearing officer also determined that the claimant's average weekly wage (AWW) for the purpose of computing temporary income benefits (TIBs) between May 27 and August 9, 2004, is \$400.00. The nonentitlement to travel expenses for medical treatment was not appealed and has become final pursuant to Section 410.169. The appellant (self-insured) appeals the AWW determination, asserting that the necessary issue of what the claimant's reasonable expectation of summer earnings was, was not before the hearing officer and that he failed to make a necessary finding of fact. The self-insured also appeals on sufficiency of the evidence grounds. There is no response from the claimant in the file.

DECISION

Affirmed.

The claimant, a school teacher with the self-insured, sustained a compensable injury on \_\_\_\_\_. The claimant testified that she has been a teacher for 14 years and has always worked in the summer sessions except for 2001, 2003, and 2004. She had intended to work in 2001 but was injured just prior to the summer session. In 2003, she was transitioning from a different school district to the self-insured. She said that she would have worked the session of 2004 but for her injury. She also testified that the reason that she did not apply for the summer 2004 job was because of her compensable injury and that if she had worked the summer of 2004, she would have earned an AWW of \$400.00. Section 408.0446(b) provides:

an insurance carrier may adjust a school district employee's [AWW] as often as necessary to reflect the wages the employee reasonably could expect to earn during the period for which [TIBs] are paid. In adjusting a school district employee's [AWW]..., the insurance carrier may consider any evidence of the employee's reasonable expectation of earnings.

In the instant case, the self-insured is arguing that a specific finding of the reasonable expectation of earnings has to be made in order to determine the AWW. The self-insured also argues that because the claimant did not actually apply for summer work, she could not have had any reasonable expectation of earnings.

We previously said in Texas Workers' Compensation Commission Appeal No. 022860-s, decided January 3, 2003, "An analysis of what a school district employee could reasonably expect to earn over the summer should be made with reference to the

work history of that employee and not with reference to the expectation of payment from the school district over a 12-month period.” In the instant case, the hearing officer, while not making a specific finding of fact concerning reasonable expectation of earnings, clearly performed the indicated analysis in the Background Information portion of his decision. In that section, the hearing officer discussed the claimant’s summer work history and the fact that she did not apply for the summer of 2004 because of her injury. He also quoted an affidavit submitted by the self-insured that the claimant had not met the requirements to work summer school in 2004. Considering all the evidence, he concluded that her AWW for the summer would have been \$400.00. There is sufficient evidence in the record to support that finding. Nothing in our review of the record indicates that the hearing officer’s decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is ( **a self-insured governmental entity**) and the name and address of its registered agent for service of process is

**SUPERINTENDENT  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge